ITEM NO.13 Court 13 (Video Conferencing) SECTION IV-A

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 17903-17904/2021

(Arising out of impugned final judgment and order dated 21-04-2021 in CEA No. 36/2018 21-04-2021 in CEA No. 7/2019 passed by the High Court Of Karnataka At Bengaluru)

TOYOTA KIRLOSKAR MOTOR PRIVATE LIMITED Petitioner(s)

VERSUS

THE COMMISSIONER OF CENTRAL TAX Respondent(s)

(FOR ADMISSION and I.R.)

Date : 18-11-2021 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. V. Sridharan, Sr. Adv.
Mr. Aditya Bhattacharya, Adv.
Ms. Apeksha Mehta, Adv.
Ms. Mounica Kasturi, Adv.
Mr. Akash Pratap Singh, Adv.
Ms. Charanya Lakshmikumaran, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

We have heard Mr. V. Sridharan, learned Senior Counsel appearing for the petitioner.

The statutory provision - Rule 2(1) defining “Input Service” post 01.04.2011 is very clear and the out-door catering services when such services are used primarily for personal use or consumption of any employee is held to be excluded from the definition of “Input Service”.

In that view of the matter, it cannot be said that the High Court has committed any error in denying the input tax credit and holding that such a service is excluded from input service.

We are in complete agreement with the view taken by the High Court. Hence, the Special Leave Petitions stand dismissed.

(R. NATARAJAN) (NISHA TRIPATHI)
ASTT. REGISTRAR-cum-PS BRANCH OFFICER

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CEA NO.36/2018

C/W CEA NO.7/2019

BETWEEN:

TOYOTA KIRLOSKAR MOTOR PRIVATE LIMITED,
PLOT NO.1, BIDADI INDUSTRIAL AREA,
RAMANAGAR DISTRICT, BANGALORE URBAN
(REPRESENTED BY MR.VEERESH PRASAD M.S
MANAGER – TAXATION) ... APPELLANT
(COMMON)

(BY SRI.RAVI SHANKAR K.S, ADVOCATE
A/W SRI.ANANDA, ADVOCATE)

AND:

THE COMMISSIONER OF CENTRAL TAX,
ABOVE BMTC BUS STAND,
BANASHANKARI, BANGALORE 560 070. ... RESPONDENT
(COMMON)

(BY SRI.ARAVIND V CHAWAN, ADVOCATE)

CEA No.36/2018 IS FILED U/S 35G OF THE CENTRAL EXCISE ACT, PRAYING TO ALLOW THE APPEAL, HOLD AND DECIDE THE QUESTIONS OF LAW INVOLVED IN THE CASE IN FAVOUR OF THE APPELLANT AND SET ASIDE THE CESTAT FINAL ORDER NO.20469/2018 DATED 1.3.2018 AND ETC.

CEA No.7/2019 IS FILED U/S 35G OF THE CENTRAL EXCISE ACT, PRAYING TO ALLOW THE APPEAL, HOLD AND DECIDE THE

QUESTIONS OF LAW INVOLVED IN THE CASE IN FAVOUR OF THE APPELLANT AND SET ASIDE THE CESTAT FINAL ORDER NO.21681/2018 DATED 29.10.2018 AND ETC.

THESE CEAs HAVING BEEN HEARD AND RESERVED ON 8.4.2021 COMING ON FOR 'PRONOUNCEMENT' OF JUDGMENT THIS DAY, **SATISH CHANDRA SHARMA J.,** DELIVERED THE FOLLOWING:

JUDGMENT

Regard being had to the similitude in the controversy involved in all these two cases, they were heard analogously together and a common judgment is being passed.

2 The present appeals are arising out of the order dated 1.3.2018 passed by the CESTAT (Central Excise & Service Tax Appellate Tribunal, South Zonal Bench), Bangalore, in case No.20469/2018 and the order dated 29.10.2018 in case No.21681/2018.

3. The facts of CEA.No.36/2018 are narrated as under:

The appellate is a Private Limited Company engaged in the manufacture of motor vehicles and parts and accessories thereof classifiable under Chapter 87 of the First Schedule to the Central Excise Tariff Act, 1944. The appellant is registered as a manufacturer of dutiable excisable goods under the Central Excise Act, 1944. It has established a factory under the

Factories Act, 1948 and is having a canteen facility within their establishment to provide food, refreshment and beverages to the workers, employees and staff. The appellant's factory is situated in a village called 'Bidadi' which is approximately 40 kms., away from Bengaluru city and is duly registered under the Factories Act, 1948 and other labour laws. It is a 'factory' as defined under the Central Excise Act, 1944 read with Rule 9 of the Central Excise Rules, 2002.

4. The contention of the appellant is that keeping in view the statutory provisions as contained under Sections 42 to 50 dealing with welfare of employees of the Factories Act, 1948, the appellant is under an obligation to establish a canteen in the premises of the factory. It has been further stated that as per the Rules framed by the State of Karnataka i.e., Mysore Factory Rules, under Rules 93 to 100**,** the appellant is required to maintain and supply food stuffs in the canteen and non compliance of the statutory provisions for not maintaining a canteen and not establishing a canteen, attracts punishment and penalties as per Chapter 10 of the Factories Act, 1948.

5. It has been further stated that the expenses relating to canteen incurred by the appellant including the cost

of providing food stuff and beverages are regarded as employee cost or labour cost and the same is included as a part of manufacturing cost/overheads towards production and it forms part of accessible value of the final product manufactured by the company on which the company has been discharging central excise duties as applicable.

6. The facts further reveal that for providing food and beverages the appellant engaged the services of outdoor catering viz., Sodexho Food Solutions Private Limited to render taxable services of outdoor catering to the appellant by supplying services inside the canteen facility and raised bills/invoices by charging applicable rate of service tax. The service being an eligible 'input service' for the manufacturing, in terms of Rule 2(l) of the Cenvat Credit Rules, 2004, the appellant is availing the cenvat credit of the same and utilized the said credit towards duty payable on the final products manufactured by the appellant. The appellant has taken cenvat credit of service tax paid under the category of 'outdoor catering' service since September 2004 till April 2011 i.e., till the amendment was made to Cenvat Credit Rules, 2004.

7. The facts further reveal that during the period of April 2011 to September 2011 the appellant company had paid

service tax of Rs.37,53,952/- to the service provider i.e., Sodexho Food Solutions Private Limited, who rendered outdoor catering services to the appellant and the appellant took cenvat credit of service tax of Rs.37,53,952/- as credit on 'input service' as defined under Rule 2(l) of the Cenvat Credit Rules. The appellant also reversed under protest the said credit availed on 14.3.2013 on account of certain objections raised by the department in respect of entitlement of credit.

8. The department issued a show cause notice on 23.4.2012, wherein it was alleged that outdoor catering services were not eligible input services being excluded vide Rule 2(l)(c) of the Cenvat Credit Rules and accordingly, the show cause notice proposed to demand the credit with interest and imposition of penalty. A reply was filed to the show cause notice dated 23.4.2012 and the adjudicating authority has passed the order on 4.4.2013 confirming the demand of Rs.37,53,952/- with interest and also imposed a penalty of Rs.5 lakhs under Section 11AC r/w Rule 15(1) of the Cenvat Credit Rules, 2004.

9. The appellant thereafter preferred an appeal before the Commissioner (Appeals), Bengaluru and the appellate

authority has rejected the appeal by an order dated 24.7.2013. A second appeal was preferred before the CESTAT/Tribunal and the Tribunal has referred the matter as there were divergent decisions across India on the issue to a larger Bench and finally, the Tribunal has answered the reference in favour of the department and an order was passed dismissing the appeal.

10. The contention of the learned Senior Counsel arguing the matter before this Court is that the assessing officer, the first appellate authority and the Tribunal have erred in law and in facts in not appreciating the statutory definition of input service under the Cenvat Credit Rules, 2004 and as there is a duty casted upon the appellant to establish a canteen under the Factories Act, 1948, by no stretch of imagination the amendment which includes certain exceptionary services will disentitle the appellant company from Cenvat Credit. The learned Senior Counsel has also made reference to the Budge Speech of Finance Minister dated 28.2.2011 and he has stated that the Tribunal has erred in law and in facts in referring to the Speech of Finance Minister and the order passed by the Tribunal is bad in law.

11. The learned counsel has placed reliance upon the following judgments;

1. **Ganeshan Builders Ltd., vs. CST,** reported in 2019 (20) GSTL 39 (Mad),

2. **CEA vs. Mangalam Cement Ltd.**, reported in 2018(9) GSTL 17 (Raj),

3. **CEA vs. Stanzen Toyotetsu India (P) Ltd.,** reported in 2011 (23) STR 444 (Kar.),

4. **Resil Chemicals Pvt.Ltd., vs CEA,** 2014 (36) STR 1260 (Kar),

5. **CEA vs. Solaris Chemtech Ltd.**, 207 (214) ELT 481 (SC),

6. **Municipality of Dhulia vs. New Pratap Spg. Wvg and Manufacturing Co.Ltd.,** reported in ?AIR 1935 Bom.415,

7. **Commissioner of C.Ex., vs. Ultratech Cement Ltd.,** reported in 2010(260) ELT 369 (Bom),

8. **State of Madras vs. G.J.Coelho,** reported in 1964 (LIII) ITR 186 (SC), and

9. **Sayaji Iron and Engg Co. vs. CIT,** reported in 2002 (253) ITR 749 (Guj.).

12. This Court has admitted the appeal on the following substantial question of law;

> "Whether the services received by the appellant in the capacity of employer for providing food and beverages in the canteen maintained and run in the factory as per the mandate of Section 46 of the Factories Act, 1948 would be eligible for cenvat credit and it would be within scope of 'Input Services' as per Section 37(2)(xviaa) of the Central Excise Act, 1944 read with Section 94(2) of Finance Act, 1994?

13. Heard the learned counsel for the parties at length and perused the record.

14. In the present case the undisputed facts reveal that the orders passed by the authorities, appellate authority and the Tribunal are based upon the amendment which came into force from 1.4.2011. For deciding the controversy in the present case, the definition of 'input service' prior to amendment and post amendment are necessary and they are reproduced as under;

> Post 1.4.2011 the definition of 'input service' stood thus:
>
> Rule 2(l) "Input Service" means any service,-
>
> (i) used by a provider of output service for providing an output service; or
>
> (ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products, up to the place of removal, and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation up to the place of removal; but excludes, -
> (A) services portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the finance Act (hereinafter referred as specified

- services insofar as they are used for –

(a)construction or execution of works contract of a building or a civil structure or a part thereof; or

(b)laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services;

Or

(B) Services 'provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle which is not a capital goods; or

(BA) Service of general insurance business, servicing, repair and maintenance insofar as they relate to a motor vehicle which is not a capital goods, except when used by

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;"

Prior to 1.4.2011, the definition of 'input service' stood thus:

Rule 2(l) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or
(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes services used in relation to setting up, modernization, renovation or repairs of a factory,

> premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage up to the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation up to the place of removal"

15. The undisputed facts make it very clear that the period involved in the present appeal is admittedly of post 2011 period and after the amendment to the provisions of Rule 2(l) defining the 'input service' and the amendment to the provision of Rule 2(l) defining the 'input service' came into effect w.e.f., 1.4.2011. The definition of 'input service' post amendment contains exclusion clause and exclusion clause was effected w.e.f., 1.4.2011. Clause (c) of the said exclusion clause specifically excludes the services provided in relation to 'outdoor catering' services. It is certainly not in dispute that said services prior to 1.4.2011 have been held to be covered by the definition of 'input service', however, after the amendment came into force in the light of specific exclusion clause, 'outdoor catering' service is not at all covered under the definition of 'input service'.

16. Heavy reliance has been placed upon a judgment delivered by the Madras High Court in the case of **Ganeshan**

Builders Ltd., (supra). In the aforesaid case, there was an insurance in existence and it was not an insurance in individual worker's name. the Madras High Court has held that the insurance policy was assessee's specific and not employee's specific and as there was a mandatory duty casted upon the assessee to establish a canteen under the Building and Other Workers (Regulation of Employment and Conditions of Service) Act, 1996, has allowed the writ petition, whereas, in the present case no such contingency is involved. In the present case though the expenses incurred in respect of the canteen services for providing food and beverages in canteen maintained and run by the employer is included towards the total cost of the product and it is certainly required to establish under the Factories Act, 1948 (Section 46), but the fact remains, the canteen has been established primarily for personal use or consumption of the employees. There is no ambiguity in the statute and therefore, as it is a taxing statue, this Court cannot add or substitute words in the statutory provisions while interpreting the statutory provision. The statue does not leave any room for any other interpretation and therefore, in the considered opinion of this Court, the judgment does not help the appellant in any manner.

17. Reliance has also been placed upon a judgment in the case of **Commissioner of Central Excise vs. Stanzen Toyotetsu India (P) Ltd., (supra).** However, the aforesaid judgment is distinguishable on facts as it was delivered in respect of a period prior to amendment.

18. Similarly, the other judgment relied upon in a case of **Resil Chemicals Pvt.Ltd., (supra)**. Again it is a judgment involving pre amendment era.

19. Reliance has also been placed upon a judgment delivered in the case of **Commissioner of Central Excise vs. Solris Chemtech Ltd., (supra)**. This Court has carefully gone through the aforesaid judgment and again the aforesaid judgment does not help the appellant in the light of specific amendment on the subject.

20. Another judgment over which reliance has been placed is in the case of **Commissioner of Central Excise, Ahemedabad-1 vs. Ferromatik Milacron India Ltd., (supra)**. The judgment is again distinguishable as it relates to period w.e.f., March 2006 to September 2006 i.e., period prior to amendment under the Cenvat Credit Rules, 2004. In the

considered opinion of this Court, the statutory definition of 'input service' under Rule 2(l) post amendment w.e.f., 1.4.2011 provides that 'outdoor catering' services falls under the exceptionary services in Rule 2(l)(c) of the Cenvat Credit Rules, 2004. Hence, the Tribunal was justified in dismissing the appeal preferred by the assessee.

21. A Taxing Statute has to be strictly construed and in Taxing Statue one has to look merely at what is clearly said. Justice G.P.Singh in his land mark work on Principles of Statutory Interpretation, 14th Edition under the heading Strict Construction of Taxing Statute, has observed as under;

> "**General Principles of strict construction**
>
> A taxing statute is to be strictly construed. The well-established rule in the familiar words of LORD WENSLEYDALE,, reaffirmed by LORD HALS-BURY and LORD SIMOND, means: "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words" (Re, Micklethwait, (1885) 11 Ex 452, p.456. In a classic passage LORD CAIRNS stated the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute". (Partington v. A.G., (1869) LR 4 HL 100, p.122: 21 LT 370). VISCOUNT SIMON quoted with approval a passage

> from TOWLATT, J. expressing the principle in the following words: "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used". (Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, p.71 (ROWLATT, J). Relying upon this passage LORD UPJOHN said: "Fiscal measures are not built upon any theory of taxation." (Commr. Of Customs v. Top Ten Promotions, (1969) 3 ALL ER 39, p.90 (HL)."

22. The Hon'ble Supreme Court has also taken a similar view in large number of cases in respect of Taxing Statutes. [See A.V.Fernandez v. State of Kerala, AIR 1957 SC 657, p.661: 1957 SCR 837; referred to in CIT, Bombay v. Provident Investment Co., AIR 1957 SC 664, p.666: 1957 SCR 1141; Gursahai v. CIT, AIR 1963 SC 1062, p.1064: (1963) 3 SCR 893; See further Banarsi Debi v. ITO, AIR 1964 SC 1742, p.1744: (1964) 7 SCR 539, CIT, Gujarat v. Vadilal Lallubhai, AIR 1973 SC 1016, p.1019: (1973) 3 SCC 17; Diwan Brothers v. Central Bank, Bombay, AIR 1976 SC 1503, p.1508: (1976) 3 SCC 800; McDowell & Co.Ltd., v. Commercial Tax Officer, AIR 1977 SC 1459, p.1465: (1977) 1 SCC 441; Mohammad Ali Khan v. Commissioner of Wealth Tax, AIR 1997 SC 1165, p.1167: 1997(3) SCC 511; Hansraj & Sons v. State of Jammu & Kashmir, AIR 2002 SC 2692, pp.2698, 2699: (2002) 6 SCC

227; Geo Miller & Co. (P) Ltd., v. State of M.P., (2004) 5 SCC 209, p.216 (para30): AIR 2004 SC 3552.]

23. Resultantly, this Court has to look squarely at the words of the statute and interpret them. A Taxing Statute has to be interpreted in the light of what is clearly expressed, it cannot imply anything which is not expressed, it cannot merge provisions in the statute so as to supply any assumed deficiencies.

24. Resultantly, this Court does not find any reason to interfere with the order passed by the Tribunal. The question of law is answered in favour of the revenue and against the assessee. The appeal stands dismissed accordingly.

In light of the judgment passed in CEA.No.36/2018, the connected CEA.No.9/2019 filed by the appellant is also dismissed.

No orders as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

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